IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM:

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.10403 of 2011

M.KACHAPALAYAM ..PETITIONER

- Vs.-

THE CHAIRMAN -CUM -
MANAGING DIRECTOR
TAMILNADU WARE HOUSING CORPORATION
100 ANNA SALAI
GUINDY
CHENNAI-32. ..RESPONDENT

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the Respondent herein to disburse and made payment of pending withheld terminal benefit amount of Rs.1,37,432.50 together with interest at the rate of 9% with effect from 07.07.2006 to the Petitioner forthwith in view of the regularization of storage losses by the Board of Directors of Tamilnadu Warehousing Corporation as evident from the Board of Directors meeting held on 07.07.2006 in the Tamil Nadu Warehousing Corporation, Chennai-32.

For Petitioner : Mr.R. Natarajan
for Mr.G.Vijayaraghavan

For Respondents : Mr.S.A.Hafiz

ORDER

The petitioner served as Manager in Tamil Nadu Warehousing Corporation in various divisions right from the year 1970. While he was functioning as Manager at Arani and Kancheepuram branches during the period between 1976 and 1979, proceedings were initiated for storage loss on account of long storage of wheat stocks beyond the capacity level. The respondent ordered recovery from the salary of the petitioner. The petitioner on attaining the age of superannuation retired on 31 October 1994. The Corporation withheld a sum of Rs.1,37,432.50 from the terminal benefits of the petitioner by proceedings dated 7 May 2002. Subsequently the Corporation has taken a decision to treat the storage loss as business loss. The petitioner therefore submitted a representation requesting the Corporation to release the retained amount. However there was no follow up action taken by the respondent resulting in filing this writ petition.

2. The respondent filed a counter affidavit wherein it was contended that a sum of Rs.80,782.95 alone has been withheld towards Food Corporation of India storage loss for the period from 1977 to 1998. According to the Corporation, the petitioner has already filed a writ appeal in W.A.No. 844 of 1999 against the order dated 17 November 1998 for a direction to refund the sum of Rs.59,750/- withheld towards Food Corporation of India storage loss. However, there was no direction to pay the withheld amount. According to the respondent, the Food Corporation of India is yet to pass orders with regard to the storage loss and as such it is pre-mature to demand payment of the amount withheld on that count.

3. I have heard the learned counsel for the petitioner and the learned Standing Counsel appearing on behalf of the respondent.

4. There is no dispute that proceedings were initiated by the Tamil Nadu Warehousing Corporation against the petitioner on account of storage loss. The Corporation appears to have retained a sum of Rs.1,37,432.50 pending finalisation of the issue relating to storage loss. The petitioner earlier filed a writ appeal against the order dated 17 November 1998 in W.P.No.15891 of 1991. The Division Bench in its order dated 12 February 2002 directed the respondent to withhold a sum of Rs.59,750/- and to release the balance amount payable to the petitioner.

5. The petitioner has produced a copy of the resolution passed by the Board of Directors of Tamil Nadu Warehousing Corporation at its meeting held on 7 July 2006. The resolution in respect of item No.321 relates to storage loss. It reads thus:

> "Item No.321:
> ....
> In the above said circumstances, the Board resolved that the losses due to powder formation in wheat stocks and excess ove r0.5% FCI storage loss norms in rice stocks totally amounting to Rs.5,55,408/- be treated as business loss and written off from the books of accounts for the period from 1977 to 1998. The board resolved to

make it clear that there should not be recurrence of similar instances.

6. The claim made by the petitioner to release the withheld amount is resisted by the respondent now on the ground that Food Corporation of India is yet to take a decision with regard to storage loss. There is absolutely no merit in the said contention in view of the resolution passed by the Corporation to treat it as business loss. The Corporation has already treated a sum of Rs.5,55,408/- as business loss. The said amount relates to the period from 1977 to 1998. In view of the said decision, necessarily the withheld amount should be refunded to the petitioner. The Board was not correct in its contention that till a decision is taken by the Food Corporation of India, they would retain the amount. I am therefore of the view that the issue requires consideration by the Corporation forthwith.

7. In the result, a writ in the nature of a writ of Mandamus is issued directing the respondent to consider and dispose of the representation submitted by the petitioner dated 21 October 2009 in the light of the resolution with respect to item No.321 passed by the Corporation in its 236 meeting of the Board of Directors of the Corporation held on 7 July 2006 and without reference to the failure of Food Corporation of India to take a decision in the matter of storage loss. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

8. The writ petition is allowed as indicated above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Tr/
To
THE CHAIRMAN -CUM -
MANAGING DIRECTOR
TAMILNADU WARE HOUSING CORPORATION
100 ANNA SALAI
GUINDY
CHENNAI-32.

2 cc to Mr.G.Vijayaraghavan ,Advocate, SR.No.10487
1 cc to Mr.S.A.Hafiz ,Advocate, SR.No.10524

W.P.No.10403 of 2011

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